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Sia Ee Fatt v Raj Mohamed s/o NN Abdul Rahman & Anor

HIGH COURT (MELAKA) — CIVIL APPEAL NO 11-1-1993
SURIYADI HALIM OMAR J
B 3 MAY 1996

Landlord and Tenant *— Controlled premises —Death of tenant — New tenancy agreement with current tenants — Whether need to refer to deceased tenant's tenancy — Conditions to evict current tenants — Control of Rent Act 1966 s 16*

C ***Landlord and Tenant*** *— Controlled premises —Death of tenant — Notice to quit — Who notice to quit to be addressed to — Whether notice addressed to current tenants bad — Probate and Administration Act 1959 s 39*

Landlord and Tenant *— Recovery of possession — Arrears of rent — Unjustified refusal of landlord to accept rent — Mala fides — Whether notice to quit bad*
D

On 15 March 1989, the plaintiff purchased premises at No 39, Jalan Temenggong, Melaka ('the premises') at a public auction subject to existing tenancies. When the plaintiff bought the premises, he believed that the legal tenant who had been paying rent was one VK Abdul
E Wahab ('the deceased tenant'). Subsequently, he was informed vide a letter dated 11 December 1989 that the deceased tenant had died and that the premises was occupied by his children. By a letter of demand dated 19 December 1989 addressed to the defendants' solicitors the plaintiff demanded vacant possession of the premises. The plaintiff filed an action for vacant possession of the premises
F alleging that none of the members of the family of the deceased tenant were occupying the premises and that the rent was in arrears. The defendants alleged that they were legal occupants of the premises and hence the action for vacant possession was unsustainable. This is the plaintiff's appeal from the magistrates' court.

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Held, dismissing the appeal:

(1) The non-acceptance by the plaintiff of the rent prior to being notified of the deceased tenant's demise was conduct in total disregard of the premises being under the Control of Rent Act 1966 ('the Act'). By this conduct the plaintiff was merely preparing
H the ground to be rid of the tenants. Since the rent was unjustifiably rejected, the notice to quit must be construed in a bad light as it was founded on a mala fides premise (see p 124G).

(2) With the acceptance of the first and second defendants as the new tenants the new tenancy agreement proceeds on its own
I steam without reference to the deceased tenant. To evict the defendants, the plaintiff must prove to the court that there has been at least one infringement of the pre-requisites of s 16 of the Act by both the defendants (see p 125E).

(3) If the estate of the deceased tenant had an executor then any quit or vacant possession notices to be served should be sent to that executor as otherwise the notices were bad (see p 125I); *South Union Co Ltd v Seng Hin Ltd* [1973] 1 MLJ 39 followed. Since the deceased tenant's property is vested in Amanah Raya Bhd ('the corporation'), similarly the contractual tenancy also vests in the corporation. Therefore the notices to quit and for vacant possession were bad in law (see p 126B).

[Bahasa Malaysia summary

Pada 15 Mac 1989, pihak plaintif telah membeli premis di No 39, Jalan Temenggong, Melaka ('premis itu') di suatu lelongan awam tertakluk kepada penyewaan yang wujud. Apabila plaintiff membeli premis itu, beliau mempercayai bahawa penyewa yang sah yang membayar sewaan adalah seorang bernama VK Abdul Wahab ('mendiang penyewa'). Kemudiannya, beliau telah diberitahu melalui surat bertarikh 11 Disember 1989 bahawa mendiang penyewa tersebut telah meninggal dunia dan premis itu dihuni oleh anak-anak beliau. Melalui surat bertarikh 19 Disember 1989 yang dialamatkan kepada peguamcara defendan-defendan plaintif telah menuntut milikan kosong premis itu. Plaintif telah memfailkan tindakan untuk milikan kosong premis itu atas pengataan bahawa tiada seorang ahli dari keluarga mendiang penyewa yang menghuni di premis itu dan bahawa sewa adalah tertunggak. Defendan-defendan mengatakan bahawa mereka adalah penghuni sah premis itu dan oleh itu tindakan untuk milikan kosong itu tidak boleh dikekalkan. Ini adalah rayuan plaintif dari mahkamah majistret.

Diputuskan, menolak rayuan:

(1) Tindakan plaintif enggan menerima sewa sebelum diberitahu mengenai kematian mendiang penyewa adalah kelakuan yang langsung tidak mengendahkan bahawa premis itu adalah berada di bawah Akta Kawalan Sewa 1966 ('Akta itu'). Melalui kelakuan sedemikian plaintif hanyalah menyediakan alasan untuk menyingkir penyewa-penyewa. Oleh kerana sewa telah ditolak tanpa justifikasi, notis keluar itu mesti ditakrifkan dari kacamata yang serong kerana ianya telah berasaskan premis yang *mala fides* (lihat ms 124G).

(2) Dengan penerimaan defendan-defendan pertama dan kedua sebagai penyewa baru, perjanjian penyewaan baru berjalan atas tenaganya sendiri tanoa merujuk kepada mendiang penyewa. Untuk mengusir defendan, pihak plaintif haruslah membuktikan kepada mahkamah bahawa telah berlaku suatu pelanggaran prasyarat s 16 Akta itu oleh kedua-dua pihak defendan (lihat ms 125E).

(3) Jika harta pusaka mendiang penyewa telah mempunyai seorang wasi maka apa-apa notis keluar atau milikan kosong untuk

A disampaikan patut dihantar kepada wasi kerana jika tidak, notis-notis itu adalah tidak sah (lihat ms 125I); *South Union Co Ltd v Seng Hin Ltd* [1973] 1 MLJ 39 diikut. Oleh kerana harta mendiang penyewa adalah terletakhak dalam Amanah Raya Bhd ('perbadanan itu'), dalam cara yang sama penyewaan secara kontrak itu juga terletakhak dalam perbadanan itu. Oleh itu notis-notis untuk keluar dan untuk milikan kosong adalah tidak sah di sisi undang-undang (lihat ms 126B).]

Notes

C For cases on the death of a tenant of controlled premises, see 9 *Mallal's Digest* (4th Ed, 1995 Reissue) paras 46, 773–775.

For cases on the recovery of possession of controlled premises where there are arrears of rent, see see 9 *Mallal's Digest* (4th Ed, 1995 Reissue) paras 288–355.

D **Case referred to**

South Union Co Ltd v Seng Hin Ltd [1973] 1 MLJ 39

Legislation referred to

Companies Act 1965

E Control of Rent Act 1966 s 16(1)(a), (i)

Probate and Administration Act 1959 s 39

Sekar Palaniandy (*Sault & Co*) for the appellant/plaintiff.
DA Devadason (*DA Devadason*) for the respondents/defendants.

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Suriyadi Halim Omar J: On 15 March 1989, the plaintiff purchased the premises at No 36 Jalan Temenggong, Melaka ('the premises') at a public auction subject to existing tenancies. When the plaintiff bought the property he believed that the legal tenant was one VK Abdul Wahab. He was also under the impression that the man who had been paying the monthly rent G of the premises after he acquired the property was the said VK Abdul Wahab. Subsequently he was informed vide a letter dated 11 December 1989 written by Messrs DA Devadason that VK Abdul Wahab had died and the premises was occupied by the children of the latter. After receipt of that letter the plaintiff through his solicitors demanded vacant possession H alleging that none of the members of the family of the deceased tenant were occupying the said premises. This letter of demand for vacant possession was dated 19 December 1989 addressed to DA Devadason Esq.

The defendants in the statement of defence alleged that they were I legal occupants of the rent-controlled premises and the action of vacant possession was unsustainable in law. The first defendant alleged that he was the son-in-law of the deceased tenant whilst his natural son, the second defendant alleged that he had been residing at the said premises since 1962 and therefore both were not trespassers. The issue of whether

being a son-in-law denies him the protection of the Control of Rent Act 1966 ('the Act') does not arise here because of the special factors which I shall illustrate later.

The recovery of possession of the premises is governed by s 16 of the Act as admitted by both parties. For the purposes of this case sub-s 1(a) and (i) of s 16 are relevant and they read:

> 16(1) Except for an application made under ss 18 and 19 for the recovery of possession of any controlled premises or any part thereof for the purpose of effecting or causing to be effected thereon any development, all applications for the recovery of possession of such premises or any part thereof shall be made to a court; and no order or judgment for the recovery or possession of any controlled premises or any part thereof comprised in a tenancy shall be made or given by the court except in any of the following cases—
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> (a) where rent lawfully due has been in arrears for fourteen days or upwards;
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> Provided that rent shall not be deemed to be in arrears if the tenant proves that it was tendered before such date;
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> ...
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> (i) where neither the tenant nor any member of his family is personally in occupation of the controlled premises or any part thereof; ...

I am not impressed with the contention of the plaintiff that rents have been in arrears for the months of August, September, October and November which resulted in a notice to quit dated 30 November to VK Abdul Wahab for arrears of rent. The excuse of dealing with the wrong tenant was not available for those months. A reading of the letter dated 1 December 1989 (at p 29 of the 'Rekod Rayuan Tambahan') of the defendant's solicitor's letter will indicate that the rents had been regularly paid to the plaintiff but were rejected. Why there was refusal of acceptance is unclear. As said earlier, during the alleged arrears period the plaintiff was still under the impression that the paymaster was VK Abdul Wahab. This is confirmed by para 3(c) of the statement of claim which avers that only after 11 December 1989 did the plaintiff know of the said tenant's demise. This non-acceptance of the rents prior to 11 December 1989 leaves a poor taste in the mouth as, by conduct in total disregard of the premises being under the Act, the plaintiff was merely preparing the ground to be rid of the tenants. Therefore, since the rents were unjustifiably rejected, the notice to quit must be construed in bad light as it was founded on a mala fide premise.

As regards the invocation of s 16(i) of the Act by the plaintiff, it will be helpful if I were to analyse the additional facts before coming to a finding. When the plaintiff bought the premises on 15 March 1989 at the auction, he was aware that the first defendant lived at the premises as he resided next door. Further he admitted that he had no idea after the rejection of the subsequent rents whether they were submitted to his lawyers or to the courts. The second defendant in his examination-in-chief confirmed that Abdul Wahab died on 23 July 1963 and that he continually

A stayed at the relevant premises ie No 36 Jalan Temenggong, Melaka. He confirmed that he knew and had met the plaintiff. From the notes of evidence available I could not find any rebuttal evidence to his assertion that he had been studying in Sekolah Rendah Bandar Hilir and also Sekolah Menengah Tinggi Melaka. The other additional evidence which had not been rebutted is found at p 7 of the 'Rekod Rayuan Tambahan' B where under 'General Power of Attorney' the second defendant was confirmed to be residing at the relevant premises. This is prima facie evidence and proof to support his contention that he had been living in that house prior to the auction. At the relevant time the second defendant was already of mature age as he was then 33 years of age (born 25 June C 1956).

The question that is begging to be answered is why the previous landlord continued to accept the rents after the death of VK Abdul Wahab. Was there an alteration in the condition of the tenancy which persuaded the previous owner to recognise the present defendants as the D new tenants? Since no written agreement was adduced during the hearing it is safe to conclude that the tenancy must have been an oral one. Also as there is nothing in evidence to show that the previous landlord was unaware of the demise of Abdul Wahab I thus must assume that the previous owner knew of that happening and modified the conditions of the tenancy. The acceptance of the rents after his death must bear testimony E to this change. With the acceptance of the first and second defendants as the new tenants, this new tenancy agreement takes a new twist and proceeds on its own steam without reference to Abdul Wahab. With that point established, to evict the two defendants the plaintiff must prove to the court that there has been at least one infringement of the pre-requisites F of s 16 of the Act by both the defendants.

The two notices dated 30 November 1989 and 19 December 1989 contained separate instructions. The first letter asserted that rents were in arrears whilst the other impliedly alleged trespass on the part of the defendants as persons not entitled to tenancy rights. That letter dated 30 November 1989 has been dealt with, where I held it to be bad in law. G As to the letter dated 19 December 1989 the plaintiff's lawyers had sent that letter of notice of vacant possession of the said premises on the basis that none of the members of the family of the deceased tenant, the late VK Abdul Wahab, occupied the premises. The belief that the tenancy was still with VK Abdul Wahab as reaffirmed by that unilateral letter of the plaintiff H is of no consequence as it is insufficient to prove his case. If the court were to accept the plaintiff's contention that he only accepted VK Abdul Wahab as the rightful tenant despite his demise on 23 July 1963, then a new set of legal requirements come into play. If the estate of Abdul Wahab had an executor then any quit or vacant possession notices to be served should be sent to that executor as otherwise the notices would be bad (see *South* I *Union Co Ltd v Seng Hin Ltd* [1973] 1 MLJ 39). Here the notices were not sent to the executor but to one Abdul Wahab and Mr Devadason respectively.

VK Abdul Wahab was a Muslim and invariably bound by syariah law. Since he must have died intestate then all his movable and immovable property shall vest in the corporation meaning Amanah Raya Bhd, a company incorporated under the Companies Act 1965. Section 39 of the Probate and Administration Act 1959 as amended by A912/95 is the relevant provision. The corporation has replaced the Official Administrator by virtue of the amendment. As the deceased's property is vested with the corporation similarly the contractual tenancy also vests in the corporation (p 218 RR Sethu *Rent Control Legislation in Malaysia*). Therefore the contents of the notices to quit and vacant possession to Abdul Wahab and Mr Devadason respectively were way out of line and thus bad in law.

For the above reasons I dismiss the appeal without cost.

Appeal dismissed.

Reported by Hanim Kamaruddin.